

Babuda Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Feb-18-1988

Reported in : 1988(1)WLN701

Judge : Jas Raj Chopra, J.

Appeal No. : S.B. Cr. Jail Appeal No. 100 of 1987

Appellant : Babuda

Respondent : State of Rajasthan

Judgement :

J.R. Chopra, J.

1. This is a jail appeal against the judgment of the learned Sessions Judge, Udaipur dated January 31, 1987, whereby the learned Sessions Judge has held the accused appellant Babuda guilty under Section 397, 380 and 451, IPC and sentenced him to seven year's rigorous imprisonment on the first count, two year's rigorous imprisonment with a fine of Rs. 50/- on the second count and one year's rigorous imprisonment together with a fine of Rs. 50/- on the third count.

2. The facts giving rise to this appeal, briefly stated, are that in the night intervening between 13th and 14th of September, 1985, complainant Galla and his wife Smt. Fagnu were sleeping in one kothe of their house and his mother was

sleeping in the outer portion of the house, locally called Patsal (Patal). It is alleged that three persons, armed with lathis, entered the house of Galla gave beating to Smt. Banni mother of Galla and snatched her silver Hansali and Zoolki. On hearing her cries, her son Galla came there. He too was beaten, Galla's wife Smt. Fagnu did not intervene and so she did not receive any injury. It is alleged that Smt. Banni identified one of the accused, namely, the appellant Babude in the torch light which was flashed by the accused persons on her face. It is further alleged that Smt. Banni became unconscious as soon as she received the injury on her head and she regained consciousness only in the hospital. A report of the incident was lodged at Police Station, Bakariya, which has been marked Ex. P 7 and on the basis of which the First Information Report was drawn, which has been marked Ex. P 8. Medical examination of the injuries sustained by Smt. Banni and Galla were got conducted. Injury report of Smt. Banni has been marked Ex. P 15, whereas the injury report of Galla has been marked as Ex. P 16. The X-ray plates have been marked Ex. P 1, Ex. P 2, Ex. P 3 and Ex. P 5. Smt Banni's X-ray report has been marked Ex. P 5, which shows a fracture of left metacarpal bones and fractures of frontal and parietal bones Galla's skiagram showed a fracture of the third metacarpal bone. X-ray report of Galla's injury has been marked Ex. P 5. After usual investigation, a challan was filed against accused Babuda, Dewa, Mawa, Hera and Mana. However, the learned trial Judge discharged the accused Dewa, Mawa and, Hera, but he framed charges against accused Mana and Babuda, to which they pleaded not guilty and claimed to be tried. As many as twelve witnesses were examined by the prosecution in support of its case. The statements of the accused persons were recorded under Section 313, Cr. PC. They led no defence. After hearing the parties, the learned Sessions Judge acquitted accused Mana, but convicted accused Babuda under the aforesaid Sections and hence this appeal through jail.

3. As no body came forward to represent the accused, he was provided the legal assistance and Mr. S.N. Trivedi was appointed amicus curiae to assist the accused Babuda.

4. I have heard Mr. Trivedi as also Mr. U.C.S. Singhvi the learned Public Prosecutor. Mr. Trivedi has submitted that the learned lower court has not properly

appreciated the evidence led in the case and has wrongly convicted accused Babuda. According to him, the accused deserves acquittal.

5. Mr. Singhvi has however, submitted that in this case, not only accused Babuda was identified at the time of the occurrence but his name also finds place in the First Information Report and he has been identified at the trial and more over certain articles have been recovered from his possession and they have been identified by the prosecution witnesses and as such the conviction deserves to be sustained.

6. I have given my most earnest consideration to the rival submissions made at the Bar. In this case, it is alleged that accused Babuda was identified at the time of the occurrence by PW 4 Smt. Banni-mother of complainant Galla. Smt. Fagnu has not identified accused Babuda. Rather, she has categorically, stated on oath that she has not seen accused Babuda. PW 6 Galla has also stated that accused Babuda was identified by his mother Smt. Banni. He categorically stated that he did not identify accused Babuda personally. However, his mother, who became unconscious on account of injury received by her, told her after half an hour of the occurrence that one of the accused, who came to their house and gave beating to her and Smt. Banni and snatched ornaments from her, was accused Babuda. It is alleged that PW 7 Chamna also identified the accused, but he has turned hostile and has stated that he did not identify the accused, viz, Babuda. Thus, we have been left with the sole testimony of Smt. Banni so far as the identification of accused Babuda is concerned. I have critically examined the testimony of PW 4 Smt. Banni. She has stated that when the torch was flashed on her face, she saw accused Babuda. Accused Babuda gave a lathi blow on her head. When she was cross-examined, she stated that her face was covered with her Odni. She was sleeping on a cot and while she was asleep, a lathi blow was struck on her head, by which she became unconscious and later fell down from the cot on which she was sleeping. She regained consciousness only in the morning. She was not conscious even when the police personnel came there. According to her, nobody was near her when the lathi blow was inflicted on her head, as her son and his wife were sleeping inside the Kotha in her house. When the torch was flashed, she inquired from the accused persons as to who they were. She had no light with her,

and, therefore, she has stated that she could not identify anybody as it was a dark night. The actual words used by her are as under...Later, in the last part of her cross-examination, she has stated as under...Later, she was re-examined by the learned Additional Public Prosecutor. She was asked whether she had actually identified accused Babuda or she had given out his name only on the basis of suspicion; to which she replied that in the torch light, she saw the nose of the accused which was like that of accused Babuda. Later on, she stated that she saw his full face. If the torch is flashed on the face of person, then the person, on whose face the torch is flashed, cannot identify the person who flashes the torch on the face of other persons. Moreover, when Smt. Banni has admitted in the cross-examination that she did not see the accused and has further admitted that she only suspected that it must be accused Babuda who must have taken part in the occurrence, that it becomes difficult for a court of law to hold accused as guilty of the offence. If the witness has given three versions of the occurrence, viz., firstly, she has stated that she did not identify the accused, secondly, she stated that she suspected the accused to be Babuda and thirdly, she has stated that she saw the nose of the accused and later on added that she had seen the full face of the accused, then the version, which goes in favour of the accused, should be accepted. It is a cardinal principle of criminal jurisprudence that when two views are possible, then the views which favours the accused, should be accepted. In this case, from the foresaid testimony of Smt. Banni it cannot be conclusively held that she was in the position to identify the accused or that she had actually identified the accused. Simply because a particular name finds mention in the FIR. That cannot be taken as an evidence against the accused unless the person, on the basis of whose information the names finds place in the FIR comes forward and states so and establishes this fact before the Court when he/she is examined in the court. In this case, she has miserably failed to establish that fact. Thus, so far as the testimony regarding the identity of the accused is concerned, it is of no value and on the basis of this testimony it cannot be held that accused Babuda participated in this occurrence.

7. It is alleged that certain articles were got recovered on his information and at his instance. PW 4 Smt. Banni and PW 5 Smt. Fagnu have admitted that the police people informed them that their stolen articles have been recovered and they

might come and identify the same in the Thana. They further stated that they went to the Thana and saw these articles there and later they identified these articles in the identification parade which clearly proves that the recovered articles were not led at the instance as of their recovery. This admission of both these witnesses makes the testimony regarding the recovery of the stolen articles valueless. These are the fact which could be used by the prosecution to connect the accused with the guilt and unfortunately the prosecution has not been able to establish both these facts. I, therefore, feel that the learned lower court erred in holding accused Babuda guilty under Sections 397, 380 and 451, IPC. Actually, the accused deserves benefit of doubt and consequently acquittal.

8. The result is that I accept the appeal of accused Babuda and set-aside the convictions and sentence of accused Babuda recorded by the learned Sessions Judge, Udaipur under Sections 397, 380 and 451, IPC and acquit him of the aforesaid three offences by giving him the benefit of doubt. He is in custody and be released forthwith if he is not required in any other case.

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